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89-360

IN THE SUPREME COURT
OF THE UNITED STATES

AUGUST 8th, 1989

Supreme Court, U.S.
F I L E D
AUG 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

DENNIS L. LAND,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Dennis L. Land
Petitioner
RR #1, Box 24
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402-854-2265
Dated: August 8th, 1989

QUESTION PRESENTED FOR REVIEW

1. Did the Eighth Circuit Court of Appeals commit error when it was shown that the United States did not have jurisdiction over the property or the Petitioner, where the alleged crime was committed?

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DENNIS L. LAND,
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v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioner, Dennis L. Land, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Eighth Circuit, entered on the 13th day of June, 1989.

OPINION BELOW

The United States Court of Appeals for the Eighth Circuit entered it's Memorandum Decision affirming the decision of the District Court on the 13th day of June, 1989. A copy is attached as Appendix A.

The United States Court of Appeals for the Eighth Circuit denied the Petitioner's petition for rehearing en banc, on the grounds that the petition was not filed timely, on the 1st day of August, 1989. A copy of the order is attached as Appendix B.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered it's Memorandum Decision affirming the decision of the District Court on the 13th day of June, 1989.(see Appendix A)

The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION, Article 1, section 8, clause 17:

"To exercise exclusive Legislation in all cases whatsoever, over

such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings."

STATEMENT OF THE CASE

On or about September 18, 1987, the United States Grand Jury sitting at Omaha, Nebraska, returned a 3-Count indictment against Dennis L. Land, alleging violations of Title 18, U.S.C. 1001, willfully making a false writing.

The Petitioner filed a Motion to Dismiss (filing #56) prior to the trial. The Trial Court denied Petitioner's Motion (Filing #56), and proceeded with Trial. On June 16, 1988, a jury returned a verdict of guilty to all counts of the indictment.

1. No other Petitioner is involved in this petition.

STATEMENT OF FACTS

The United States has attempted to prosecute the Petitioner for a crime that the Petitioner never

committed, in a Court that has no "Subject Matter Jurisdiction". The Petitioner, upon filing his Motion to Dismiss (filing #56), placed the burden on the prosecution, Mr. Steven Russell, to prove to the Court that such federal jurisdiction existed. There was no such proof ever entered in this case, as the Trial Court simply denied Petitioner's Motion.

The Trial Court's grounds for denying the Petitioner's Motion are as follows:

"Finally we have the Motion to Dismiss for lack of subject matter jurisdiction, which is Filing Number 56 filed by the Defendant. As I read that motion, it is premised upon a misconception really, not only of the case cited, The State of Arizona vs. Many Penny, but the law. This Court has been granted jurisdiction by Congress over crimes committed within the State of Nebraska and the fact that it occurred on land within the State of Nebraska does not deny this Court jurisdiction. The Many Penny case is simply inapposite the motion of the defendant. Filing Number 56 is denied." (T5:19-29 to T6:1-4)

In a sense, the Trial Judge is correct. He does have jurisdiction over crimes committed within the District of Nebraska, but, that jurisdiction is qualified only when the crime alleged was committed on, or within, federal property.

REASON FOR GRANTING THE WRIT

Did the Eighth Circuit Court of Appeals commit error by affirming the District Court's Decision, when it was shown that the United States did not have jurisdiction over the property or the Petitioner, where the alleged crime was committed?

Within the States of the American Union, the United States has power to acquire jurisdiction over real property and such crimes as may be committed thereon via the operation of Article 1, section 8, clause 17 of the United States Constitution. This clause requires that, for the United States to acquire jurisdiction within any State, the Government must first purchase the property and possess title to the same. Once this condition precedent is fulfilled, the State may, by legislative act, cede to the United States jurisdiction over such property, and such cession may be made either before or after the United States acquires title to the property. However, failing the State's legislative cession of jurisdiction, the property so owned by the United States remains within the jurisdiction of the State. And any crimes committed

on such property the jurisdiction of which has not been ceded to the United States must be prosecuted by the State and not the United States.

To determine whether any given tract of land within a State is subject to the jurisdiction of the United States, two inquires must first be made. First, it must be determined whether the United States has, in fact, acquired title to the property in question. If the United States does not possess fee simple title to the property, the inquiry is at an end and it is certain that the property in question and the persons and property located thereon are within the jurisdiction of the State. But, if the United States should possess title to the property, the next inquiry is to determine whether the State in question has ceded any jurisdiction over such property to the United States. If only a partial or concurrent jurisdiction over the property is ceded by the State to the United States, the property in question and any crimes committed thereon is still subject to the jurisdiction of the State. The United States acquires criminal jurisdiction over property located in a State only by having the State

cede to it exclusive or concurrent jurisdiction.

The Petitioner contends that Constitutionally, the United States Codes in question can only be enforced for a crime committed on property which is subject to the jurisdiction of the United States. Petitioner argues that since the place where the Alleged crime was committed was privately owned, and as such, was not owned by the United States, such Codes are plainly unenforceable, the property in question not being within United States jurisdiction.

Petitioner complains, on appeal, that the United States does not have jurisdiction over the place where the alleged crime in question was committed. In the District Court, Petitioner raised the issue of want of Subject Matter Jurisdiction in his Motion to Dismiss (filing #56). The District Court denied this Motion. The applicable standard of review by this Court is simply that involving a question of Law: Did the United States have jurisdiction over the subject property and the person?

FEDERAL JURISDICTION

In the United States, there are two separate and distinct jurisdictions, such being the jurisdiction of the States within their own territorial boundries and the other being Federal jurisdiction. Broadly speaking, State jurisdiction encompasses the legislative power to regulate, control and govern real and personal property, individuals and enterprises within territorial boundries of any given State. In contrast, Federal jurisdiction is extremely limited, with the same being exercised only in areas external to the State legislative power and territory.

Notwithstanding the clarity of this simple principle, the line of demarcation between these two jurisdictions and the extent and reach of each has become somewhat blurred, due to popular misconceptions and the efforts expended by the Federal government to conceal one of its major weaknesses. Only by resorting to history and case law can this obfuscation be clarified and the two distinct jurisdictions be readily seen.

The original thirteen colonies of America were each separately established by charters from the

English Crown. Outside of the common bond of each being a dependency and colony of the mother country, England, the colonies were not otherwise united. Each had its own governor, legislative assembly and courts, and each was governed separately and independently by the English Parliament.

The politicial connections of the separate colonies to the English Crown and Parliament descended to an unhappy state of affairs as the direct result of Parliamentary acts adopted in the late 1760's and early 1770's. Due to the real and perceived dangers caused by the various acts, the First Continential Congress was convened by representatives of the several colonies in October, 1774, the purpose of which was to submit a petition of grievances to the British Parliament and Crown. By the Declaration and Resolves of the First Continental Congress, dated October 14, 1774, the colonial representatives labeled these Parliamentary acts of which they complained as "impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights," and

the purpose of which were designs, schemes and plans "which demonstrate a system formed to enslave America." Revolution was assuredly in the formative stages absent conciliation between the mother country and the colonies.

Between October, 1775, and the middle of 1776, each of the colonies separately severed their ties and relations with England, and several adopted constitutions for the newly formed States. By July, 1776, the exercise of British authority in any and all colonies was not recognized in any degree. The capstone of this actual separation of the colonies from England was the more formal Declaration of Independence.

The legal effect of the Declaration of Independence was to make each new State a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This is clearly shown in **M'Ilvaine v. Coxe's Lessee**, 8 U.S. (4 Cranch) 209 (1808), where it was held:

"This opinion is predicated upon a principle which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled from the time when they declared themselves

independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British King. The treaty of peace contains a recognition of their independence, not a grant of it. From hence it results, that the laws of the several state governments were the laws of the sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted," 4 Cranch, at 212.

And a further expression of similar import is found in **Harcourt v. Gaillard**, 25 U.S. (12 Wheat.) 523 (1827), where the Court stated:

"There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states.

"Each declared itself sovereign and independent according to the limits of its territory."

"[T]he soil and sovereignty within their acknowledged limits were as much theirs at the declaration of independence as at this hour," 12 Wheat., at 526, 527.

Thus, unequivocally, in July, 1776, the new States possessed all sovereignty, power, and jurisdiction over all the soil and people in their respective territorial limits.

This condition of supreme sovereignty of each State over all property and persons within the boarders thereof continued notwithstanding the

adoption of the Articles of Confederation. In Article II of such Articles, it was expressly stated:

"Article II. Each State retains it's sovereignty, freedom, and independence, and every Power, Jurisdiction and Right, which is not by this confederation expressly delegated to the Untied States, in Congress assembled."

As the history of the confederation government has shown, each State was indeed sovereign and independent to the degree that it made the central government created by the confederation fairly ineffectual. These defects of the confederation government strained the relations between and among the States and the remedy became the calling of a Constitutional Convention.

The representatives which assembled in Philadelphia in May, 1787, to attend the Constitutional Convention met for the primary purpose of improving the commercial relations among the States, although the Convention produced more than this. But, no intention was demonstrated for the States to surrender in any degree the jurisdiction so possessed by the States at that time, and indeed the Constitution as finally drafted continued the same territorial jurisdiction of the States as

existed under the Articles of Confederation. The essence of this retention of State jurisdiction is embodied in Article 1, Section 8, Clause 17 of the U.S. Constitution, which reads as follows:

"To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings."

The reason for the inclusion of this clause in the Constitution was and is obvious. Under the Articles of Confederation, the States retained full and complete jurisdiction over lands and persons within their boarders. The Congress under the Articles was merely a body which represented and acted as agent of the separate States for external affairs, and had no jurisdiction within the States. This defect in the Articles made the Confederation Congress totally dependent upon any given State for protection, and this dependency did in fact cause embarrassment for that Congress. During the Revolutionary War, while the Congress met in Philadelphia, a body of mutineers

from the Continental Army surrounded the Congress and chastised and insulted the members thereof. The governments of both Philadelphia and Pennsylvania proved themselves powerless to remedy the situation, and the Congress was forced to flee first to Princeton, New Jersey, and finally to Annapolis, Maryland. (see **Fort Leavenworth R. Co. v. Lowe,** 114 U.S. 525, 529; 5 S.Ct. 995 (1885)) Thus, this clause was inserted into the Constitution to give jurisdiction to Congress over it's Capitol, and such other places as Congress might purchase for Forts, Magazines, Arsenals, and other needful Buildings wherein the State ceded jurisdiction of such land to the Federal Government. Other than in these areas, this clause of the Constitution did not operate to cede further jurisdiction to the Federal Government, and jurisdiction over unceded areas remained within the States.

While there had been no real provisions in the Articles which permitted the Confederation Congress to acquire property and possess exclusive jurisdiction over such property, the above clause filled an essential need by permitting the Federal Government

to acquire land for the seat of government and other purposes essential to enable the United States to perform the powers conveyed by the Constitution, and a cession of lands by any particular State would grant exclusive jurisdiction of such land to Congress. Perhaps the most cogent reasons and explanations for this clause in the Constitution were set forth in Essay No. 43 of the **Federalist**:

"The indispensable necessity of complete authority at the seat of government carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of the government for protection in the exercise of their duty might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded

part of it, to concur in the cession will be derived from the whole people of the State in their adoption of the Constitution, every imaginable objection seems to be obviated."

"The necessity of a like authority over forts, magazines, etc., established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated by requiring the concurrence of the States concerned in every such establishments."

Since the time of the of the ratification and implementation of the present U.S. Constitution, the U.S. Supreme Court and all lower courts have had many opportunities to construe and apply the above provision of the Constitution. And the essence of all these decisions is that the States of this Nation have exclusive jurisdiction of property and persons located within their boarders, excluding such lands and persons residing thereon which have been ceded to the United States.

Perhaps one of the earliest decisions on this point was **United States v. Bevans,** 16 U.S. (3 Wheat.) 336 (1818)), which involved a federal prosecution for a murder committed on board the Warship "Independence", anchored in the harbor of

Boston, Massachusetts. The defense complained that only the State had jurisdiction to prosecute and argued that the Federal Circuit Courts had no jurisdiction of this crime supposedly committed within the Federal Government's Admiralty jurisdiction. In argument before the Supreme Court, counsel for the United States admitted as follows:

"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," 3 Wheat., at 350, 351.

In holding that the State of Massachusetts had jurisdiction over the crime, the Court held:

"What, then, is the extent of jurisdiction which a State possesses?"

"We answer, without hesitation, the jurisdiction of a State is co-extensive with its territory; co-extensive with its legislative power," 3 Wheat., at 386, 387.

"The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction. ...Congress has power to exercise exclusive jurisdiction over this district, and over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals dock-yards, and other needful buildings."

"It is observable that the power of exclusive legislation (which is jurisdiction) is united with cession of territory, which is to be the free act of the States. It is difficult to compare two sections

together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our Constitution had not in view and cession of territory; or, which is essentially the same, of general jurisdiction," 3 Wheat., at 388.

Thus, in **Bevans,** the Court established a principle that Federal jurisdiction extends only over the areas wherein it possesses the power of exclusive legislation, and this is a principle incorporated into all subsequent decisions regarding the extent of Federal jurisdiction. To hold otherwise would destroy the purpose, intent and meaning of the entire U.S. Constitution.

The decision in **Bevans** was closely followed by decisions made in two State courts and one Federal Court within the next two years. In **Commonwealth v. Young,** Brightly, N.P. 302 (Pa. 1818), the Supreme Court of Pennsylvania was presented with the issue of whether lands owned by the United States for which Pennsylvania had never ceded jurisdiction had to be sold pursuant to State law. In deciding that the State law of Pennsylvania exclusively controlled this sale of Federal land, the Court held:

"The legislation and authority of Congress is confined to cessions by particular states for the seat of government, and purchases made by consent of the legislature of the State, for the

purpose of erecting forts. The legislative power and exclusive jurisdiction remained in the several States, of all territory within their limits, not ceded to, or purchased by, congress, with the assent of the State legislature, to prevent the collision of legislation and authority between the United States and the several States," Id., at 309.

A year later, the Supreme Court of New York was presented with the issue of whether the State of New York had jurisdiction over a murder committed at Fort Niagara, a Federal Fort. In **People v. Godfrey,** 17 Johns. 225 (N.Y., 1819), that Court held that the fort was subject to the jurisdiction of the State since the lands therefore had not been ceded to the United States. The rational of its opinion stated:

"To oust this State of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the State, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any State; it is not (he says,) the offense committed, but the place in which it is committed, which must be out of the jurisdiction of the State." 17 Johns. at 233.

The case relied upon by this court was **U.S. v. Bevans,** supra.

At about the same time that the New York Supreme Court rendered its opinion in **Godfrey,** a

similar situation was before a Federal Court, the only difference being that the murder committed in the case occurred on land which had been ceded to the United States. In **United States v. Cornell**, 25 Fed. Cas. 646, No. 14, 867 (C.C.D.R.I., 1819), the court held that the case fell within federal jurisdiction, describing such jurisdiction as follows:

"But although the United States may well purchase and hold lands for public purposes, within the territorial limits of a State, this does not of itself oust the jurisdiction or sovereignty of such State over the lands so purchased. It remains until the State has relinquished its authority over the land either expressly or by necessaryimplication."

"When therefore a purchase of land for any of these purposes is made by the national government, and the State legislature has given its consent to the purchase, the land so purchased by the very terms of the Constitution ipso facto falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted," 2 Mason, at 63.

Almost 18 years later, the U.S. Supreme Court was again presented with a case involving the distinction between State and Federal jurisdiction. In **New Orleans v. United States,** 35 U.S. (10 Pet.) 662 (1836)), the United States claimed title to property in New Orleans likewise claimed by the city. After holding that title to subject lands was owned by the city, the Court addressed the question of federal

jurisdiction and stated:

"Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction," 10 Pet., at 737.

In **New York v. Miln,** 36 U.S. (11 Pet.) 102 (1837), the question before the Court involved the attempt by the city of New York to assess penalties against the master of a ship for his failure to make a report as to the persons his ship brought to New York. As against the master's contention that the act was unconstitutional and that New York had no jurisdiction in the matter, the Court held:

"If we look at the place of operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction," 36 U.S., at 133.

"they are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only a right, but the bounden and solemn duty of the State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus

surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified and exclusive," 36 U.S., at 139.

Some eight years later, in **Pollard v. Hagan,** 44 U.S. (3 How.) 212 (1845), the question of federal jurisdiction was once again before the Court. This case involved a contest of the title to real property, with one of the parties claiming a right to the disputed property via a U.S. Patent; the lands in question were situated in Mobile, Alabama, adjacent to Mobile Bay. In discussing the subject of federal jurisdiction, the Court held:

"We think a proper examination of this subject will show that the United States never held any municipal sovereighty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new States were formed," 44 U.S., at 221.

"[B]ecause, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in cases in which it is expressly granted," 44 U.S., at 223.

"Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law," 44 U.S., at 228, 229.

The single most important case regarding the subject of federal jurisdiction appears to be **Fort Leavenworth R. Co. v. Lowe,** 114 U.S. 525, 5

S.Ct. 995 (1885), which sets forth the law on this point fully. There, the Railroad Company property which passed through the Fort Leavenworth federal enclave was being subjected to taxation by Kansas, and the company claimed an exemption from State taxation. In holding that the railroad company's property could be taxed, the Court carefully explained federal jurisdiction within the States:

"The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the legislative authority and control of the States equally with the property of private individuals," 114 U.S., at 531.

Thus, the cases decided within the 19th Century clearly disclosed the extent and scope of both State and federal jurisdiction. In essence, these cases, among many others, hold that the jurisdiction of any particular State is co-extensive with its borders or territory, and all persons and property located or found therein are subject to such jurisdiction; this jurisdiction is superior. Federal jurisdiction results

only from a conveyance of State jurisdiction to the federal government, and thus federal jurisdiction is extremely limited in nature. And there is no federal jurisdiction if there be no grant or cession of jurisdiction by the State to the federal government. Therefore, federal territorial jurisdiction exists only in Washington, D.C., the federal enclaves within the States, and the territories and possessions.

The above principles of jurisdiction established in the last century continue their vitality today with only one minor exception. In the last century, the cessions of jurisdiction by the States to the federal government were by legislative acts which typically ceded full jurisdiction to the federal government, thus placing into the hands of the federal government the troublesome problem of dealing with and governing scattered, localized federal enclaves which had been totally surrendered by the States. With the advent in this century of large federal works projects and national parks, the problems regarding management of these areas by the federal government were magnified. During the last century, it was thought that if a State ceded jurisdiction to the federal

government, the cession granted full and complete jurisdiction. But, with the ever increasing number of separate tracts of land falling within the jurisdiction of the federal government in this century, it was obviously determined by both federal and State public officers that the States should retain greater control over these ceded lands, and the Courts have acknowledged the constitutionality of varying degrees of State jurisdiction and control over lands so ceded.

Perhaps one of the first cases to acknowledge the proposition that a State could retain a degree of jurisdiction over property ceded to the federal government was **Surplus Trading Co. v. Cook,** 281 U.S. 647, 50 S.Ct. 455 (1930). In the case, a State attempt to assess an ad valorem tax on Army blankets located within a federal army camp was found invalid and beyond the State's jurisdiction. But, in regards to the proposition that a State could make a qualified cession of jurisdiction to the federal government, the Court held:

"[T]he state undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is

accepted by the United States. And, where such a Cession is made and accepted, it will be determinative of the jurisdiction of both the United States and the State within the reservation," 281 U.S., at 652, 652.

Two cases decided in 1937 by the U.S. Supreme Court further clarify the constitutionality of a reservation of any degree of State jurisdiction over lands ceded to the jurisdiction of the United States. In **James v. Dravo Contracting Company**, 302 U.S. 134, 58 S.Ct. 208 (1937), the State of West Virginia sought to impose a tax upon the gross receipts of the company arising from a contract which it had made with the United States to build some dams on rivers. One of the issues involved in this case was the validity of the State tax imposed on the receipts derived by the company from work performed on lands to which the State had ceded "concurrent" jurisdiction to the United States. In the Court's opinion, it held that a State could reserve and qualify any cession of jurisdiction for lands owned by the United States; since the State had done so here, the Court upheld this part of the challenged tax notwithstanding a partial cession of jurisdiction to the United States. A similar result occurred in **Silas Mason Co, v. Tax**

Commission of State of Washington, 320 U.S. 186, 58 S.Ct. 233 (1937). Here, the United States was undertaking the construction of several dams on the Columbia River in Washington, and had purchased the lands necessary for the project. Silas Mason obtained a contract to build a part of the Grand Coulee Dam, but filed suit challenging the Washington income tax when the State sought to impose such tax on the contract proceeds. Mason's argument that the federal government has exclusive jurisdiction over both the lands and such contract was not upheld by either the Supreme Court of Washington or the U.S. Supreme Court. The latter Court held that none of the lands owned by the U.S. were within its jurisdiction and thus Washington clearly had jurisdiction to impose the challenged tax; see also **Wilson v. Cook**, 327 U.S. 474, 66 S.Ct. 664 (1946).

Some years later in 1943, the Supreme Court was again presented with similar State/federal jurisdiction issues; the facts of these two cases were identical with the exception that one clearly involved

lands ceded to the jurisdiction of the United States. This single difference caused directly opposite results in both cases. In **Pacific Coast Dairy v. Department of Agriculture of California,** 318 U.S. 285, 63 S.Ct. 628 (1943), the question involved the applicability of State law to a contract entered into and performed on a federal enclave to which jurisdiction had been ceded to the United States. During World War II, California passed a law setting a minimum price for the sale of milk, which law posed penalties for sales made below the regulated price. Here, Pacific Coast Dairy consummated a contract on Moffett Field, a federal enclave within the exclusive jurisdiction of the United States, to sell milk to such federal facility at below the regulated price. When this occurred, California sought to impose a penalty for what it perceived as a violation of State law. But, the Supreme Court refused to permit the enforcement of the California Law, holding that the contract was made and performed in a territory outside the jurisdiction of California and within the jurisdiction of the United States, a place where this law didn't apply. Thus, in this case, the existence of

federal jurisdiction was the basis for the ruling. However, in **Penn Dairies v. Milk Control Commission of Pennsylvania,** 318 U.S. 261, 63 S.Ct. 617 (1943), an opposite result was reached on almost identical facts. Here, Pennsylvania likewise had a law which regulated the price of milk and penalized sales of milk below the regulated price. During World War II, the United States leased some land from Pennsylvania for the construction of a military camp; since the land was leased, Pennsylvania did not cede jurisdiction to the United States. When Penn Dairies sold milk to the military facilities for a price below the regulated price, the commission sought to impose the penalty. In this case, since there was no federal jurisdiction, the Supreme Court found that the State law applied and permitted the imposition of the penalty. Thus, these two points clearly show the different results which can occur with the presence or absence of federal jurisdiction.

A final point which must be made regarding federal jurisdiction involves the point as to when such jurisdiction ends or ceases. This point was considered in **S.R.A. v. Minnesota,** 327 U.S. 558, 66 S.Ct.

749 (1946), which involved the power of a State to tax the real property interest of a purchaser of land sold by the United States. Here, a federal post office building was sold to S.R.A. pursuant to a real estates sale contract, which provided that title would pass only after the purchase price had been paid. In refuting the argument of S.R.A. that the ad valorem tax on its equitable interest in the property was really an unlawful tax on U.S. property, the Court held:

"In the absence of some such provisions, a transfer of property held by the United States under State cessions pursuant to Article 1, Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the States. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power," 327 U.S., at 563, 564.

Thus, it appears clearly that once any property within the exclusive jurisdiction of the United States is no longer utilized by the government for governmental purposes, and the title or any interest therein is conveyed to private interests, the

jurisdiction of the federal government ceases and jurisdiction once again reverts to the State.

The above principles regarding the distinction between State and federal jurisdiction continue through today; see **Paul v. United States,** 371 U.S. 245, 83 S.Ct. 426 (1963), and **United States v. State Tax Commission of Mississippi**, 412 U.S. 363, 93 S.Ct. 2183 (1973). And what was definitely decided in the beginning days of this Republic regarding the extent, scope, and reach of each of these two distinct jurisdictions remains unchanged and forms the foundation and basis for the smooth workings of State governmental systems in conjunctions with the federal government. Without such jurisdictional principles which form a clear boundry between the jurisdiction of the States and the United States, our federal governmental system would have surely met its demise long before now.

In summary, jurisdiction of the States is essentially the same as that possessed by the States which were leagued together under the Articles of

Confederation. The Confederated States possessed absolute, complete, and full jurisdiction over property and persons located within their borders. It is hypocritical to assume or argue that these States, which had absolved and banished the centralized power and jurisdiction of the English Parliament and Crown over them by the Declaration of Independence, would shortly thereafter, cede comparable power and jurisdiction to the confederation Congress. They did not and they closely and jealously guarded their own rights, powers, and jurisdiction. When the Articles were replaced by the Constitution, the intent and purpose of the States was to retain their same powers and jurisdiction, with a small concession of jurisdiction to the United States for lands found essential for the operation of that government. However, even this provision did not operate to instantly change any aspect of State jurisdiction, it only permitted its future operation wherein any State, by its own volition, should choose to cede jurisdiction to the United States.

By the adoption of the Constitution, the States jointly surrendered some 17 specific and well defined powers to the federal Congress, which related strictly to external affairs of the States. Any single power, or even several powers combined, do not operate in a fashion as to invade or divest a State of its jurisdiction. As against a single State, the remainder of the States under the Constitution have no right to jurisdiction within the single State absent its consent.

The only provision in the Constitution which permits jurisdiction to be vested in the United States is found in Article 1, Section 8, Clause 17, which provides the mechanism for a voluntary cession of jurisdiction from any State to the United States. When the Constitution was adopted, the United States had jurisdiction over no lands within the States, possessing jurisdiction only in the lands encompassed in the Northwest Territories. Shortly thereafter, Maryland and Virginia ceded jurisdiction to the United States for Washington, D.C. As time progressed thereafter, the States at various times ceded jurisdiction to federal enclaves within the

States. Today, the territorial jurisdiction of the United States is found only in such ceded areas, which encompass Washington, D.C., the federal enclaves within the States, and such territories and possessions which may be now owned by the United States.

The above conclusion is not the mere opinion of the author of this brief, but it is likewise the opinion of the federal government itself. In June 1957, the government of the United States published a work entitled **Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part II,** which report is the definitive study on this issue. Therein, the Committee stated:

"The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction -- by State consent under Article 1, Section 8, Clause 17 ..... Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place," **Id.**, at 41.

"It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to Clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area

within a State, such jurisdiction being for exercise by the State, subject to non-interference by the State with Federal functions," **Id.**, at 45.

"The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundries of a State," **Id.**, at 46.

"On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crime occurs on areas as to which legislative jurisdiction has been vested in the Federal Government." **Id.**, at 107.

Thus, from an abundance of case law, buttressed by this lenghty and definitive government treatise on this issue, the "jurisdiction of United States" is carefully circumscribed and defined as a very precise portion of America. The United States is one of the 51 jurisdictions existing on this continent, excluding Canada.

FEDERAL CRIMINAL JURISDICTION

It is a well established principle of law that all federal "legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears"; see **Caha v. United States,** 152

U.S. 211, 215, 14 S.Ct. 513 (1894); **American Banana Company v. United Fruit Company,** 213 U.S. 347, 357, 29 S.Ct. 511 (1909); **United States v. Bowman,** 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922); **Blackmer v. United States,** 284 U.S. 421, 437, 52 S.Ct. 252 (1932); **Foley Bros, v. Filardo,** 336 U.S. 281, 285, 69 S.Ct. 575 (1949); **United States v. Spelar,** 338 U.S. 217, 222, 70 S.Ct. 10 (1949); and **United States v. First National City Bank,** 321 F.2nd 14, 23 (2nd Cir., 1963). And this principle of law is expressed in a number of cases from the federal appellate courts; see **McKeel v. Islamic Republic of Iran,** 722 F.2nd 582, 589 (9th Cir., 1983) (holding the Foreign Sovereign Immunities Act as territorial); **Meredith v. United States,** 330 F.2nd 9, 11, (9th Cir., 1964)(holding the Foreign Torts Claim Act as territorial); **United States v. Cotroni,** 527 F.2nd 708, 711 (2nd Cir., 1975) (holding federal wiretap laws as territorial); **Stowe v. Devoy,** 588 F.2nd 336, 341 (2nd Cir., 1978); **Cleary v. United States Lines, Inc.,** 728 F.2nd 607, 609 (3rd Cir.,1894) (holding federal age discrimination laws as

territorial); **Thomas v. Brown & Root, Inc.,** 745 F.2nd 279, 281 (4th Cir., 1984) (holding same as Cleary, supra); **United States v. Mitchell,** 553 F.2nd 996, 1002 (5th Cir., 1077) (holding Marine Mammals Protection Act as territorial); **Pfeiffer v. William Wrigley, Jr., Co.,** 755 F.2nd 554, 557 (7th Cir., 1985)(holding age discrimination laws as territorial); **Airline Stewards & Stewardesses Assn. v. Northwest Airlines, Inc.,** 267 F.2nd 170, 175 (8th Cir., 1959) (holding Railway Labor Act as territorial); **Zahourek v. Arthur Young and Co.,** 750 F.2nd 827, 829 (10th Cir., 1984) (holding age discrimination laws as territorial); **Commodities Futures Trading Comm. v. Nahas,** 738 F.2nd 487 (D.C. Cir., 1984)(holding commission's subpoena power under federal law as territorial); **Reyes v. Secretary of H.E.W.,** 476 F.2nd 910, 915 (D.C. Cir., 1973) (holding administration of Social Security Act as territorial); and **Schoebaum v. Firstbrook**, 268 F.Supp. 385, 392 (S.D.N.Y., 1967)(holding securities act as territorial). But, because of statutory language, certain drug laws operate extra-territorially; see

United States v. King, 552 F.2nd 833, 851 (9th Cir., 1976). The United States has territorial jurisdiction only in Washington, D.C., the federal enclaves within the States, and in territories and insular possessions of the United States. However, it has no territorial jurisdiction over non-federally owned areas inside the territorial jurisdiction of the States within the Union. And this proposition of law is supported by literally hundreds of cases.

As a general rule, the power of the United States to criminally prosecute is, for the most part, confined to offenses committed within "its jurisdiction". This is born out simply by examination of Title 18, U.S.C.. Section 5 thereof defines the term "United States" in clear jurisdictional terms. (Note: The statutory definition of "United States" as expressed in Section 5 is identical to the Constitutional definition of this term; see **Cunard S.S. Co. v. Mellon,** 262 U.S. 100, 43 S.Ct. 504 (1923), which deals with the definition of "United States" as used in the 18th Amendment.) Section 7 contains the fullest statutory definition of the

"jurisdiction of the United States." The U.S. District Courts have jurisdiction of offenses occurring within the "United States" pursuant to Title 18, U.S.C., Section 3231.

Examples of this proposition are numerous. In **Pothier v. Rodman,** 291 F. 311 (1st Cir., 1923), the question involved whether a murder committed at Camp Lewis Military Reservation in the State of Washington was a federal crime. Here, the murder was committed more than a year before the United States acquired a deed for the property in question. Pothier was arrested in Rhode Island and filed a habeas corpus petition seeking his release on the grounds that the federal courts had no jurisdiction over an offense not committed in U.S. jurisdiction. The First Circuit agreed that there was no federal jurisdiction and ordered his release. But, on appeal to the U.S. Supreme Court, in **Rodman v. Pothier**, 264 U.S. 399, 44 S.Ct. 360 (1924), that Court reversed, although agreeing with the jurisdictional principles enunciated by the First Circuit, it held that only the federal Court in Washington State could hear

that issue. In **United States v. Unzeuta**, 35 F.2nd. 750 (8th Cir. 1929), the Eighth Circuit held that the United States had no jurisdiction over a murder committed in a railroad car at Fort Robinson, the State Cession statute being construed as not including railroad rights-of-way. This decision was reversed in **United States v. Unzeuta**, 281 U.S. 138, 50 S.Ct. 284 (1930), the Court holding that the United States did have jurisdiction over the railroad rights-of-way in Fort Robinson. In **Bowen v. Johnson**, 97 F.2nd 860 (9th Cir., 1938), the question presented was whether jurisdiction over an offense prosecuted in federal court could be raised in a petition for habeas corpus. The denial of Bowen's petition was reversed in **Bowen v. Johnson**, 306 U.S. 19, 59 S.Ct, 442 (1939), the Court concluding that such a jurisdictional challenge could be raised in a habeas corpus petition. But, the Court then addressed the issue, found that the United States both owned the property in question and had a State legislative grant ceding jurisdiction to the United States, thus there was jurisdiction in the United States to prosecute Bowen. But, if jurisdiction is not vested in the United States pursuant to the

statute, there is no jurisdiction; see **Adams v. United States**, 319 U.S. 312, 63 S.Ct. 1122 (1943).

And the lower federal courts also require the presence of federal jurisdiction in criminal prosecutions. In **Kelly v. United States**, 27 F. 616 (D.Me., 1885), federal jurisdiction of a manslaughter committed at Fort Popham was upheld when it was shown that the United States owned the property where the offense occurred and the State had ceded jurisdiction. In **United States v. Adem**, 158 F.996 (D.N.J., 1908), federal jurisdiction for a forgery offense was upheld on a showing that the United States owned the property where the offense was committed and the State had ceded jurisdiction of the property to the United States. In **United States v. Penn**, 48 F. 669 (E.D.Va., 1880), since the United States did not have jurisdiction over Arlington National Cemetery, a federal larceny prosecution was dismissed. In **United States v. Lovely**, 319 F.2nd 673 (4th Cir., 1963), federal jurisdiction was found to exist by United States ownership of the property and a State cession of jurisdiction. In **United States v.**

Watson, 80 F.Supp. 649 (E.D.Va., 1948), federal criminal charges were dismissed, the Court stating as follows:

"Without proof of the requisite ownership or possession of the United States, the crime has not been made out," 80 F.Supp., at 651.

In **Brown v. United States,** 257 F. 46 (5th Cir. 1919), federal jurisdiction was upheld on the basis that the United States owned the post office site where a murder was committed and the State had ceded jurisdiction; see also **England v. United States,** 174 F.2nd. 466 (5th Cir., 1949); **Krull v. United States,** 240 F.2nd 122 (5th Cir., 1957); **Hudspeth v. United States,** 223 F.2nd 848 (5th Cir., 1955); and **Gainey v. United States,** 324 F.2nd 731 (5th Cir., 1963). In **United States v. Townsend,** 474 F.2nd 209 (5th Cir., 1973), a conviction for receiving stolen property was reversed when the Court reviewed the record and learned that there was absolutely no evidence disclosing that the defendant had committed this offense within the jurisdiction of the United States. And in **United States v. Bensen,** 495 F.2nd 475 (5th Cir., 1974),

in finding federal jurisdiction for a robbery committed at Fort Rucker, the Court stated:

"It is axiomatic that the prosecution must always prove territorial jurisdiction over the crime in order to sustain a conviction therefor," 495 F.2nd at 481.

In two Sixth Circuit cases, **United States v. Tucker**, 122 F. 518 (W.D.Ky., 1903), a case involving an assault committed at a federal dam, and **United States v. Blunt**, 558 F.2nd 1245 (6th Cir., 1977), a case involving an assault within a federal penitentiary, jurisdiction was sustained by finding that the United States owned the property in question and the State involved had ceded jurisdiction. In **In re Kelly**, 71 F. 545 (E.D.Wis., 1895), a federal assault charge was dismissed when the court held that the State cession statute in question was not adequate to convey jurisdiction of the property in question to the United States. In **United States v. Johnson**, 426 F.2nd 1112 (7th Cir., 1970), a case involving a federal burglary prosecution, federal jurisdiction was sustained upon the showing of United States ownership and cession. And cases from the Eight and Tenth Circuits likewise require the same elements

to be shown to demonstrate the presence of federal jurisdiction; see **United States v. Heard,** 270 F.Supp. 198 (W.D.Mo., 1967); **United States v. Redstone,** 488 F.2nd 300 (8th Cir., 1973); **United States v. Goings**, 504 F.2nd 809 (8th Cir., 1974) (demonstrating loss of jurisdiction); **Hayes v. United States,** 367 F.2nd 216 (10th Cir., 1966); **United States v. Carter,** 430 F.2nd 1278 (10th Cir., 1970); **Hall v. United States,** 404 F.2nd 1367 (10th Cir., 1969); **United States v. Cassidy**, 571 F.2nd 534 (10 Cir., 1978).

Of all the Circuits, the Ninth Circuit has addressed jurisdictional issues more than any of the rest. In **United States v. Bateman,** 34 F. 86 (N.D.Cal., 1888), it was determined that the United States did not have jurisdiction to prosecute for murder committed at the Presidio because California had never ceded jurisdiction; see also **United States v. Tully,** 140 F. 899 (D.Mon., 1905). But later, California ceded jurisdiction for the Presidio to the United States, and it was held in **United States v. Watkins**, 22 F.2nd 437 (N.D.Cal., 1927), that this

enabled the United States to maintain a murder prosecution; see also **United States v. Holt,** 168 F. 141 (W.D.Wash., 1909), **United States v. Lewis,** 253 F. 469 (S.D.Cal., 1918), and **United States v. Wurtzbarger,** 276 F. 753 (D.Or., 1921). Because the United States owned and had a State cession of jurisdiction for Fort Douglas in Utah, it was held that the United States had jurisdiction for a rape prosecution in **Rogers v. Squier,** 157 F.2nd 948 (9th Cir., 1946). But, without a cession, the United States has no jurisdiction; see **Arizona v. Manypenny,** 445 F.Supp. 1123 (D.Ariz., 1977).

The above cases from the United States Supreme Court and federal appellate courts set-forth the rule that in criminal pprosecutions, the government, as the party seeking to establish the existence of federal jurisdiction, must prove United States ownership of the property in question and a State cession of jurisdiction. This same rule manifests itself in State cases. State courts are courts of general jurisdiction and in a State criminal prosecution, the State must only prove that the

offense was committed within the State and a county thereof. If a defendant contends that only the federal government has jurisdiction over the offense, he, as proponent for the existence of federal jurisdiction, must likewise prove United States ownership of the property where the crime was committed and State cession of jurisdiction.

Examples of the operation of this principle are numerous. In Arizona, the State has jurisdiction over federal lands in the public domain, the State not having ceded jurisdiction of that property to the United States; see **State v. Dykes,** 114 Ariz. 592, 562 P.2nd. 1090 (1977). In California, if it is not proved by the defendant in a State prosecution that the State has ceded jurisdiction, it is presumed the state does have jurisdiction over a criminal offense; see **People v. Brown,** 69 Cal. App,2nd 602, 159 P.2nd 686 (1945). If the cession exists, the State has no jurisdiction; see **People v. Mouse,** 203 Cal. 782, 265 P. 944 (1928). In Montana, the State has jurisdiction over property if it is not proved there is a State cession of jurisdiction to the United States; see

State ex rel Parker v. District Court, 147 Mon. 151, 410 P.2nd 459 (1966); the existence of a State cession of jurisdiction to the United States ousts the State of jurisdiction; see **State v. Tully,** 31 Mon. 365, 78 P. 760 (1904). The same applies in Nevada; see **State v. Mack**, 23 Nev. 359, 47 P. 763 (1897), and **Pendleton v. State,** 734 P.2nd 693 (Nev., 1987); it applies in Oregen (see **State v. Chin Ping,** 91 Or. 593, 176 P. 188 (1918) and **State v. Aguilar**, 85 Or.App. 410, 736 P.2nd 620 (1987); and in Washington (see **State v. Williams**, 23 Wash.App. 694, 598 P.2nd 731 (1979).

In **People v. Hammond,** 1 Ill.2nd 65, 115 N.E.2nd 331 (1953), a burglary of an I.R.S. office was held to be within State jurisdiction, the Court holding that the defendant was required to prove the existence of federal jurisdiction by the United States ownership of the property and State cession of jurisdiction. In two cases from Michigan, larcenies committed at United States post-offices which were rented were held to be within state jurisdiction; see **People v. Burke,** 161 Mich. 397, 126 N.W. 446

(1910) and **People v. Van Dyke**, 276 Mich. 32, 267 N.W. 778 (1936); also see **In re Kelly**, 311 Mich. 596, 19 N.W.2nd 218 (1945). In **Kansas City v. Garner**, 430 S.W.2nd 630 (Mo.App., 1968), State jurisdiction over a theft offense occurring in a federal building was upheld, and the Court stated that a defendant had to show federal jurisdiction by proving United States ownership of the building and a cession of jurisdiction from the State to the United States. A similar holding was made for a theft at a United States missile site in **State v. Rindall**, 146 Mon. 64, 404 P.2nd 327 (1965). In **Pendleton v. State**, 734 P.2nd 693 (Nev. 1987), the State court was held to have jurisdiction over a D.U.I. committed on federal lands, the defendant having failed to show United States ownership and State cession of jurisdiction.

In **People v. Gerald**, 40 Misc.2nd 819, 243 N.Y.S.2nd 1001 (1963), the State was held to have jurisdiction of an assault at a U.S. post-office since the defendant did not meet his burden of showing presence of federal jurisdiction; and because the defendant failed to prove title and jurisdiction in the

United States for an offense commited at a customs station, State jurisdiction was upheld in **People v. Fisher**, 97 A.D.2nd 651, 469 N.Y.S.2nd 187 (A.D. 3 Depy., 1983). The proper method of showing federal jurisdiction in State court is demonstrated by the decision in **People v. Williams**, 136 Misc.2nd 294, 518 N.Y.S.2nd 751 (1987). The rule is likewise enunciated in **State v. Burger**, 33 Ohio App. 3d 231, 515 N.E.2nd 640 (1986), in a case involving a D.U.I. offense committed on a road near a federal arsenal.

In **Kuerschner v. State**, 493 P.2nd 1402 (Okl.Cr.App., 1972), the State was held to have jurisdiction of a drug sales offense occurring at an Air Force Base, the defendant not having attempted to prove federal jurisdiction by showing title and jurisdiction of property in question in the United States; see also **Tovry v. State**, 540 P.2nd 597 (Okl.Cr.App., 1975). Similar holdings for murders committed at U.S. post-offices were made in **State v. Chin Ping**, 91 Or. 593, 176 P. 188 (1918), and in **United States v. Pata**, 393 F.2nd 44 (7th Cir.,

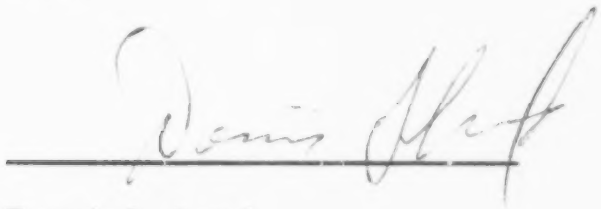
1968). Another Oregen case, **State v. Aguilar**, 85 Or.App. 410, 736 P.2nd 620 (1987), demonstrates this rule. And finally, in **Curry v. State**, 111 Tex.Cr. 264, 12 S.W.2nd 796 (1928), it was held that, in the absence of proof that the State had ceded jurisdiction of a place to the United States, the State courts had jurisdiction over an offense.

Therefore, in federal criminal prosecutions, the government must prove the existence of federal jurisdiction by showing U.S. ownership of the place where the crime was committed and the State cession of jurisdiction. If the government contends for the power to criminally prosecute for an offense occurring outside "its jurisdiction", it must prove an extra-territorial application of the statute in question as well as a constitutional foundation supporting the same. Absent this showing, no federal prosecution can be commenced for offenses committed outside "its jurisdiction".

CONCLUSION

For the foregoing reasons, petitioner Dennis L. Land respectfully requests that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted this 24 day of AUGUST, 1989.



Dennis L. Land
Defendant-Petitioner
RR #1, Box 24
Marquette, Nebraska 68854
402-854-2265

APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

JUDGEMENT

No. 88-2480

United States of America, Appellee

vs.

Dennis L. Land, Appellant.

Appeal from the United States District Court for the District of Nebraska

CR. 87-0-82

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties without oral argument.

After consideration, it is ordered and adjudged that the judgement of the district court in this case be affirmed in accordance with the opinion of this court.

June 13, 1989

A true copy.

ATTEST:

Robert D.St. Vrain

Clerk,U.S. Court of Appeals,Eighth Circuit

MANDATE ISSUED: JULY 11, 1989

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

NO. 88-2480

United States of America, Appellee,

vs.

Dennis L. Land, Appellant.

Appeal from the United States District Court for the District of Nebraska

Submitted: May 18,1989
Filed: June 13, 1989

Before ARNOLD, BOWMAN, and MAGILL, Circuit Judges.

ARNOLD, Circuit Judge.

Dennis L. Land, a farmer in Marquette, Nebraska, appeals pro se from his conviction on three counts of making false statements in violation of 18 U.S.C. §1001. On appeal, Land argues that the United States did not have jurisdiction over the "property" where the alleged crimes were committed. Amicus(1) argues that the evidence was insufficient to support Land's conviction, as the criminal-

intent and material-statement elements required by the statute were lacking, and that the District Court(2) erred by allowing individual jurors to question witnesses during the trial.

(1) The lawyer who represented Land in the District Court no longer represents him. He (the lawyer) has filed a brief in this Court at our request. We assume for purposes of this appeal, without deciding the point, that we may properly consider arguments made by the amicus.

(2) The Hon. Lyle E. Strom, Chief Judge, United States District Court for the District of Nebraska.

I.

Land's convictions arise out of his application for crop insurance coverage and claims for indemnity from the Federal Crop Insurance Corporation (FCIC) , a branch of the Department Agriculture, in 1983 and 1984. An application for crop insurance requires the applicant to list the number of acres to be insured and whether these crops were planted by a deadline determined by FCIC each planting season. Count One of

the indictment alleged that Land falsely stated that planting had been completed on a particular tract on June 3, 1983, two days before the planting deadline. Counts Two and Three alleged that Land underreported the total amount of production from his 1984 corn crop in his claims for indemnity under his 1984 FCIC insurance policy.

At trial it was undisputed that Land planted a portion of his 1983 corn crop after the deadline and that no late-planting agreement was in effect between Land and FCIC. Land testified that all of his dealings with FCIC were with Melvin Sperling (deceases at the time of trial), and FCIC adjuster. Tr. 688. Land also testified that he executed the acreage report for his 1983 insurance in blank and that he told Sperling that part of his planting was not completed by the deadline, but that Sperling told him not to worry and that he would take care of it. Tr. 698-99.

Sperling's wife, Lola, an FCIC agent,

testified that she was Land's crop-insurance agent in 1983 and 1984, and that Land had come to her office in June 1983 and provided her with all the information for his crop insurance. Tr. 134-36. Lola Sperling further testified that she observed Land sign the crop-acreage report indicating that planting had been completed on the tract of land at issue on June 3, 1983. Tr. 140-41. Testimony revealed that at no time during the investigation of Land's 1983 application for crop insurance did Land claim to have relied on Melvin Sperling's alleged representations regarding crop insurance. Tr. 295-96

Arland Pully, Area Claims Specialist for FCIC, testified that he and an FCIC adjuster visited Land in early 1985 to prepare claim forms and investigate Land's 1984 claim for corn crop loss. Tr. 340. Testimony of the adjuster, Donald Schmeekle, revealed that Pulley had instructed Schmeekle not to sign the claim forms because of the discrepancies

between his appraisal of Land's 1984 corn production and Land's claim of loss. Tr. 539-40.

During trial, after each witness had been questioned by the attorneys, the Court asked if the jurors had any questions they would like the Court to ask the witness. Juror questions would first be directed to the Court and then repeated by the Court to the witness. At no time did defense councel object to this procedure or to any of the questions asked by the jurors.

The jury found Land guilty on all three counts of the indictment. Land was sentenced to three concurrent five-year terms of imprisonment, with all but sixty days suspended. Land was also placed on four years probation and required to perform 200 hours of community service and pay restitution in the amount of $47,799.18 on Count One. This appeal followed.

II

Land's argument that the United States lacks jurisdiction over the alleged crimes because they were not committed on federal land is frivolous. The alleged false statements were made to FCIC, an agency of the United States. The Nature of the real estate to which the statements rrelated is irrelevent.

Amicus argues that allowing jurors to question witnesses was improper, and that Land was prejudiced by some of the jurors questions. Because there was no objection at trial, this court is limited to deciding whether the procedure involved "plain errors or defects affecting substantial rights." Fed. R. Crim. P. 52(b). We see no plain error in this case.

In DeBenedetto v. Goodyear Tire & Rubber Co., 754 F.2d 512, 516 (4th Cir. 1985), the Fourth Circuit held that even though "the practice of juror questioning is frought

with dangers which can undermine the orderly progress of the trial to verdict", it is still a matter within the discretion of the trial court. In DeBenedetto, the Court found no reversible error in the use of juror questions because of defense councel's failure to object to the procedure and the lack of prejudice. Id. at 517.

In another juror-questioning case, the Fourth Circuit advised that "the district court should require jurors to submit questions in writing, without disclosing the question to other jurors, whereupon the court may pose the question in its original or restated form upon ruling the question or the substance of the question proper." United States v. Polowichak, 783 F.2d 410, 413 (4th Cir. 1986) (no prejudice resulted from juror's stating question within the hearing of other jurors to before it was ruled upon by the court). Allowing jurors to state their questions within the hearing of other jurors raises the problem that not

only the questioning juror but the other jurors are likely to retain whatever mind-set has been generated by the question, leaving the court and counsel to ponder, under the stress of trial, how much influence a juror question, answered or unanswered, may have had on the perceptions of the jury as a whole. DeBenedetto, F.2d at 516

Although the procedure used in the instant case is somewhat troubling (allowing juror questions to be stated out loud before the court had ruled them proper), we do not believe Land was prejudiced as a result. The juror questions related to the procedures used and circumstances surrounding the planting and harvesting of corn, and the nature and amount of corn losses and indemnity claims filed in 1983 and 1984. Tr. 122-23, 176-79, 217-18, 250-51, 405-06, 463-65, 484-85, 621-22, 670-72, 767-70, 780-81. Amicus asserts that these questions gave the appearance that the jurors were improperly comparing Land with other farmers. Amicus Br. 18. Amicus's speculation as to

the mind-set of the jurors who asked and heard questions is just that--speculation.

The remaining issues raised by amicus are without merit. First, amicus argues the evidence was insufficient to support the jury's finding of guilt with respect to Count One because Land did not have the requisite intent to make a false statement. On review, this Court must uphold the conviction if, viewing the evidence in a light most favorable to the government, there is substantial evidence to support the jury's verdict. United States v. Karunatileka, 820 F.2d 961, 965 (8th Cir. 1987). In light of the testimony discussed above contradicting Land's version of the events surrounding the filing of his 1983 crop report, we believe there is sufficient evidence to support the jury verdict.

Finally, amicus asserts that Land's statements on his 1984 claim for indemnity forms were not material and could not have affected FCIC's decision to pay his claims, because Pulley had instructed the adjuster

in advance of the investigation not to sign Land's claim forms. This analysis is flawed. In the context of section 1001, a material stateement is one which is regardless of what the government agent knew at he time the statement was made. United States v. Whitaker, 848 F.2d 914, 916 (8th Cir. 1988). Here, it is clear that Land's underreporting of his 1984 corn crop was capable of influencing FCIC's decision to approve his claims for indemity.

Affirmed.

Atrue copy.

Attest.

CLERK, U.S. COURT OF APPEALS,

EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-2480

United States of America,
Appellee.

vs.

Dennis L. Land,
Appellant.

Appeal from the United States
District Court
for the District of Nebraska

Appellant's petition for rehearing en banc is denied for the reason that it was untimely filed.

August 1, 1989

Order Entered at the Direction of the Court:

Robert D. St. Vrain
Clerk, U.S. Court of Appeals
Eighth Circuit